

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DINO CAROSELLI,

Plaintiff,

STIPULATION AND
ORDER OF DISCONTINUANCE
PURSUANT TO RULE
41(A)

-against-

Sergeant RICHARD COX; Sergeant ANTHONY VOLPE;
Sergeant TROY MITCHELL; Sergeant WRIGHT; Officer
CORDWAY; Officer CLARKE; Sergeant VASILE; JOHN
DOES; Captain JOHN ROURKE; and Physician Assistant
LAUX; and various JOHN DOES, individually and in their
official capacities,

04-CV-266

(GTS)(GHL)

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for plaintiff and defendants Cox, Volpe, Mitchell, Cordway, Clarke, and Vasile, parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties;

1. Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys fees, and discharges and releases defendants and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not,

which relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against the defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

2. In addition, plaintiff discontinues Dino Caroselli v. The State of New York, Claim No. 107414, in the State of New York Court of Claims, with prejudice and on the merits.
3. Defendants discharge and release plaintiff from any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action.
4. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.
5. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.
6. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits or their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by

the parties to any generally applicable policy or procedure in the future.

7. Following the execution of this stipulation, and its being ordered by the Court, defendants shall pay to plaintiff and his attorney the sum of \$70,000.00 in full settlement of any and all claims. Payment by defendants of this *amount shall* be made in two checks. The first check shall be drawn to the order of the plaintiff, Dino Caroselli, 93-A-8121, in the amount of \$55,000.00 and mailed to him at his resident correctional facility, Shawangunk Correctional Facility, PO Box 700, Wallkill, New York 12589, for deposit in the plaintiff's inmate facility/departmental account. The second check will be payable to plaintiff's attorney David M. Giglio, Esq., in the amount of \$15,000.00, and will be mailed to Mr. Giglio at 231 Elizabeth Street, Utica, New York 13501. These amounts include all sums to which plaintiff is entitled, including but not limited to damages, costs, and attorney's fees.
8. Payment by defendants of the amount specified in paragraph 7 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law.
9. This stipulation shall be null and void if the approvals referred to in paragraph 8 are not obtained, and this action shall then be placed back on the trial calendar without prejudice.
10. Payment of the amounts referenced in paragraph 7 will be made within one hundred and twenty (120) days after approval of this stipulation by the Court and receipt by defendants' counsel of a copy of the so-ordered stipulation.
11. In the event that the terms of paragraph 8 are satisfied, but payment is not made

within the 120 day period set forth in paragraph 10, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the one hundred and twenty-first day after court approval.

12. The foregoing constitutes the entire agreement of the parties.

Dated: Wallkill, New York
November 20, 2008

Dino Caroselli
Dino Caroselli

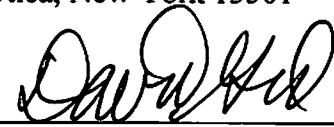
Sworn to before me
this 20th day of November, 2008

Frances Woodruff
Notary Public

FRANCES WOODRUFF
Notary Public in the State of New York
Qualified in Ulster County No. 4953152
My Commission Expires July 3, 2011

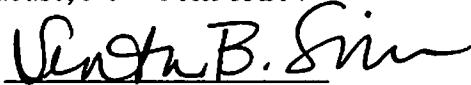
Dated: Utica, New York
12/22, 2008

DAVID M. GIGLIO, ESQ.
Attorney for plaintiff Dino Caroselli
231 Elizabeth Street
Utica, New York 13501


David M. Giglio, Esq.
Bar Roll No. 601758

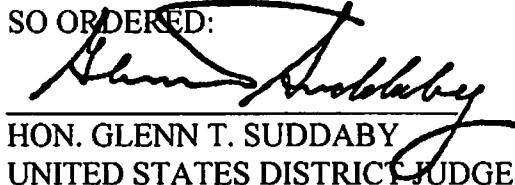
Dated: Syracuse, New York
12/31, 2008

ANDREW M. CUOMO
Attorney General for the State of New York
Attorney for Defendants
Office of the Attorney General
615 Erie Boulevard West, Suite 102
Syracuse, New York 13204

By: 
Senta B. Siuda
Assistant Attorney General, of Counsel
Bar Roll No. 104416

Dated: Syracuse, New York
JANUARY 6, 2008/9

SO ORDERED:


HON. GLENN T. SUDDABY
UNITED STATES DISTRICT JUDGE